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**IN THE  
COURT OF APPEALS OF INDIANA**

[illegible]

No. 02A03-0712-JV-565

**March 19, 2008**

**BAILEY, Judge**

## **Case Summary**

Janice Coleman (“Mother”) appeals from the juvenile court’s determination that her sons, D.C., Jam.J., Jac.J.1, and Jac.J.2 (collectively “the children”), are children in need of services (“CHINS”). We reverse.

## **Issue**

The issue is whether the evidence is sufficient to support the CHINS determinations.

## **Facts and Procedural History**

Allen County Department of Child Services Family Case Manager, Eric Kelker (“Kelker”), was directed by his supervisor to initiate a case involving Mother and her four children. Based on a report received by the Allen County Department of Child Services (“ACDCS”), the concerns at the initial visit were that Mother was heating the home with a gas stove with open flames, she was not directing the boys away from the open flames, Ralph Coleman may be disciplining with a belt and/or touching the children in a sexual manner, the home was not clean and the boys had poor personal hygiene, there was not adequate bedding or food in the home, and Mother used foul language in front of the children.

Upon entering Mother’s home in December of 2006, Kelker noticed that the home was extremely warm and the inhabitants were all dressed in shorts and t-shirts despite it being mid-December. In receiving a tour of the home, Kelker noticed that there were three beds in the home as well as a day bed and there was one to two days’ worth of food in Mother’s freezer. Kelker did not note any issues regarding the cleanliness of the children. Kelker discussed the allegations of inappropriate touching and discipline by Ralph Coleman. Mother denied both allegations and said that Ralph did not discipline the boys. Kelker only

stayed for 20-30 minutes because Mother was upset by his presence and all of the boys wanted to give their input regardless as to whom the question was directed. Kelker left the home and called his superior from his car. Kelker was instructed to go back into the home to ask Mother if she would accept services.

As Kelker approached the house, Mother was standing in the doorway. When Kelker asked Mother if she would participate in any services, Mother became enraged and told Kelker to get off her property.

Kelker interviewed the triplets, Jam.J., Jac.J.1, and Jac.J.2, at their school a couple days after the initial interview. Kelker observed that the children were clean, and the boys told him that they bathe at home. The boys also denied that their Uncle Ralph beat or molested them. The triplets told Kelker that each night they would trade off as to which one slept on a pile of blankets, which they referred to as a pallet, rather than in a bed.

Kelker also interviewed school officials and service providers to gather more information about the welfare of the children. Shirley Smith (“Smith”), the student relations case manager for East Allen County Schools (“the School”), had known Mother for five or six years. Based on behaviors exhibited by D.C. and Jam.J., Smith had referred Mother to Kristen Holzinger with the Status Offender Court Alternative Project (“SOCAP”). The behavior issues involved insubordination, fighting, pushing, and kicking that had led to sixteen out-of-school suspensions for D.C. and five out-of-school suspensions for Jam.J. The children also had a number of illness-related absences, but Smith opined that the absences were not excessive. Smith also suggested involvement with the Bowen Center. She suggested Mother obtain a medical checkup for the boys to see if they had attention deficient

disorder or if medical treatment was needed. All of these services references were voluntary, but Smith indicated to Mother that there would be consequences if she did not follow through with the references.

Smith accompanied Mother to the doctor for a checkup for the boys. The doctor prescribed Ritalin for D.C. Based on D.C.'s behavior after Ritalin was prescribed, Smith felt it was obvious that there were times when D.C. had not taken his medication. When confronted about D.C.'s inconsistent behavior, Mother explained to Smith that at one time the medication had been misplaced or taken from her home. Mother then brought the medication to the school so that D.C. could take his medicine at school. Smith was also concerned that Mother had indicated that Mother felt like giving Ritalin to the triplets, but Mother did not tell Smith whether she had actually done so.

According to Smith, Mother initially followed through with the referral to the Bowen Center. With SOCAP, Mother did take assistance in finding a home, but when other recommendations were made by SOCAP, Mother did not follow through. Smith noted that Mother always attended scheduled conferences and had been very supportive of the School, approaching the issues with a positive attitude. As to the boys' hygiene, Smith stated that their clothes were usually dirty but she never received any complaints from the teachers about their hygiene. Smith's main concern is that if the out-of-school suspensions continue for D.C. and Jam.J. that one of them might be expelled.

Emma Knowles ("Knowles"), a Child Adolescent Case Manager at the Otis R. Bowen Center, worked with the four boys after the School's referral. Knowles had difficulty with her initial assessment because Mother could not answer the questions regarding the boys'

conditions and behaviors and she could not remember the name of D.C.'s medication or the name of his doctor. Knowles conducted the initial assessment on December 1, 2006. Knowles developed a plan to help improve Mother's parenting skills and improve the boys' behavior. Knowles had recommended that the boys complete a psychological evaluation, but Mother did not follow through. Mother expressed that she thought such an evaluation was a waste of time. Knowles was able to work with the boys for six to eight weeks. However when she did go to the school to work with them, one or all of the boys were usually absent.

Knowles observed that during her visits to the home the gas stove would be burning the entire time and that the boys would actually lean over the flames. There was no food or pan over the burners, just open flames. Knowles testified that on December 15, 2006, that two of the triplets needed their clothes washed and needed showers. She also stated that on almost every occasion that she saw the children that they needed clean clothes because the clothes had ground in dirt. She was also concerned that Mother gave D.C.'s medication to the other boys. Knowles visited Mother's home five times between October 27, 2006, and January 3, 2007. On one of those occasions, no one was at the home.

Knowles attended an expulsion hearing for D.C. on December 20.<sup>1</sup> Knowles had informed Mother of the hearing but Mother did not attend. In the beginning of January of 2007, Mother contacted the Bowen Center and instructed them to never visit her house again.

Holzinger, a case facilitator for the Youth Service Bureau SOCAP office, met Mother when the School referred her for voluntary services. She had her first meeting with Mother on Feb. 22, 2006. This meeting was with Mother to discuss some services that could help

her. Holzinger made referrals to Project Impact for mentors for the boys and to Park Center for a medical assessment of the triplets. Mother did not contact either agency. Holzinger did help Mother with finding housing as she was living with her mother who was moving out of town. Holzinger's last contact with Mother was in November of 2006. Other than assistance with finding housing and accepting some food vouchers, Holzinger opined that the services offered to Mother had not been successful. Holzinger never met the children.

When questioned as to why her children were given out-of-school suspensions, Mother said that she did not know. Mother explained that when the School suggested that she participate in services that she had a nervous breakdown and took the children out of school for a week. Mother denied ever giving any of the children medication for which they did not have a prescription.

On or about January 18, 2007, ACDCS presented its report to the juvenile court seeking a finding of probable cause that the children were CHINS. The juvenile court found probable cause to exist, and despite ACDCS's recommendation that the children remain with Mother, the juvenile court placed the children in foster care. On February 12, 2007, ACDCS filed a verified petition alleging the children to be CHINS. An amended petition was filed on April 20, 2007. A fact-finding hearing was held on April 25, 2007, and May 15, 2007. The juvenile court held that the children were CHINS by its order on July 3, 2007.

Mother now appeals.

### **Discussion and Decision**

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<sup>1</sup> It is unclear from the record whether this occurred in 2006 or 2007.

## I. Standard of Review

Mother contends that the evidence was insufficient to support the juvenile court's determination that the children are in need of services. The ACDCS had the burden of proving by a preponderance of the evidence that the children were CHINS. In re C.B., 865 N.E.2d 1068, 1073 (Ind. Ct. App. 2007), trans. denied. We review the sufficiency of the evidence by considering only the evidence favorable to the judgment, together with the reasonable inferences to be drawn therefrom. T.Y.T. v. Allen County Div. of Family and Children, 714 N.E.2d 752, 756 (Ind. Ct. App. 1999). In doing so, we neither reweigh the evidence nor judge witness credibility. Id. Furthermore,

[d]etermining whether the evidence is sufficient requires both a quantitative and qualitative analysis.... Quantitatively, evidence may fail only if it is absent, that is only where there is none at all. Qualitatively, however, it fails when it cannot be said reasonably that the intended inference may logically be drawn therefrom. The failure of inference may occur as a matter of law when the intended inference can rest on no more than speculation or conjecture.

In re M.W., 869 N.E.2d 1267, 1270 (Ind. Ct. App. 2007) (quoting Carbo, Inc. v. Lowe, 521 N.E.2d 977, 980 (Ind. Ct. App. 1988)).

Indiana Code Section 31-34-1-1 provides:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

The CHINS statute does not require a court to wait until tragedy occurs to intervene. Roark v. Roark, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she is seriously endangered by parental action or inaction. Id. The purpose of a CHINS adjudication is not to punish the parents, but to protect the children. In re A.I., 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), trans. denied.

The relationship between parent and child is constitutionally protected. Troxel v. Granville, 530 U.S. 57, 66 (2000). Specifically, the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents in directing the care, custody and control of their children. Id. However, this right is not unlimited, and when parents neglect, abuse or abandon their children, the state has the authority under its parens patriae power to intervene. In re T.H., 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006).

## II. Analysis

On appeal, Mother argues that the evidence is insufficient to support the juvenile court's conclusion that the children are CHINS and because she was already receiving services, this made the coercive intervention of the court unnecessary. The juvenile court made, in relevant part, the following findings:

5. On or about December 18, 2006, the children were in the care of the Respondent mother. The DCS case manager responding to a report of alleged abuse and neglect made entry in to the mother's home. He found the premises to be clean and appropriate. Although the house was warm it was being heated by use of the gas kitchen stove. Sufficient bedding was not available for all of the children. Home based services were offered to the mother. However she rejected the offer. During the investigation, the mother became upset and



ordered the casemanager off her property.

6. The home is without adequate beds for the children. On rotating basis the children sleep on make-shift beddings that they call “pallets”.

7. From the testimony of the student relations casemanager for East Allen County Schools, the court can find (sic) and conclude that the children have experienced some attendance and behavioral problems. [D.C.] has had several absences and sixteen out of school suspensions. [Jam.J.] has had seven absences and five out of school suspensions. [Jac.J.1] and [Jac.J.2] have only missed three days of school and have not suffered any suspensions.

8. While the absences are not considered to be excessive by the school officials, there is grave concern with regard to the children’s behavior. D.C.’s behavior has included fighting insubordination. D.C. was expelled for pushing another child into a wall. Jam.J. has been disciplined for fighting and for not following adult instruction.

9. The children have received services through the Status Offender Court Alternative Project (SOCAP) and the Bowen Center for counseling services.

10. The mother has cooperated with the schools’ discipline and has met with school officials when requested.

11. [D.C.] was prescribed Ritalin. However, the mother failed to insure that he received his medications as prescribed. On one occasion the mother was observed administering [D.C.’s] medications to the other children to calm them down.

12. Bowen Center Casemanager, Emma Knowles, visited mother and the children in their home for six to eight weeks beginning October 27, 2006. She described an environment that was “chaotic”. On the October and at later visits, the caseworker found the children to be unkempt. In January of 2007, the mother contacted the Bowne (sic) Center and discontinued services.

13. Krsitn (sic) Holzinger, a case worker with SOCAP also met with the mother. At their meeting on February 22, 2006, the mother was referred to a mentoring project for the children and to Park Center for mental health assessments. However, she did not follow all of the recommendations for additional services. SOCAP services were terminated on or about November, 20, 2006.

14. The mother has acknowledged that she cannot control her children’s

behavior when not on medication. However, the mother has resisted or have (sic) failed to benefit from (sic) services that were designed to help her correct the problems.

15. DCS removed the children and placed them in foster care. Upon their arrival the foster father observed the children to be dirty and bruised.

16. The Court finds that allegations 4(A) [Allegations Regarding the Mother] 1, 2, 3, 4, 5 (in part, there is no evidence the family was evicted), 6, 7, 8, 9, 11, 12, 13, 14, and 15 are true.

17. The mother is unable to provide the children with the necessary medical care, supervision and as a result their physical and mental condition is seriously endangered.

App. at 26-27. While the evidence supports the majority of the findings, there are some findings that are not supported. In the fifth finding, it states that during DCS's visit to Mother's home the home was heated by a gas kitchen stove. Kelker, in fact, testified that he asked Mother if she used the stove to heat her home. Mother denied doing so. Kelker also admitted that he did not determine how the home was being heated. Therefore, there is no support for the finding that Mother was using her stove for heat.

In finding number eight, it states that D.C. was expelled. The record does not support this conclusion. There was testimony that there was an expulsion hearing, but there was no evidence presented regarding the outcome of that hearing.

Finding eleven states, in part, that on one occasion Mother was observed administering D.C.'s medications to the other children. The only person who testified to having knowledge of the alleged improper dispensing of D.C.'s medication is Knowles. She stated that, "I know also that [Mother] was giving D.C.'s medication to the other boys to calm them down[.]" Hearing trans. at 93. However, Knowles did not provide how she had

this knowledge.<sup>2</sup> She did not indicate whether she observed Mother dispensing the medication or whether Mother told Knowles that she gave D.C.'s Ritalin to the triplets. Smith testified that Mother told her that Mother felt like giving the triplets Ritalin but never indicated whether she had actually done so. Without more, the evidence does not support this finding.

Finding fourteen says that Mother acknowledged that she could not control her children when they are not medicated. Mother's testimony was that when the triplets were about five or six Mother had been unable to control them, so she sought for them to be placed on Ritalin. Mother's testimony does not contain a statement that currently, as the triplets are ten years old, she is unable to control them. Mother said that the triplets have been off Ritalin for years and that their behavior has improved now that they are older. This testimony does not support the finding that Mother admitted that she currently cannot control her children when they are not medicated.

Also, there is no support in the record for the statement in the fifteenth finding that the foster father observed the children to be dirty and bruised. In fact, there is no mention of the children's foster parents anywhere in the record.

The court also found almost all of the allegations made by ACDCS to be true. The majority of the allegations in the amended petition are duplicated in the juvenile court's order. However, there are two allegations that the court finds to be true but does not specifically mention it in the final order.

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<sup>2</sup> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Ind. Evid. Rule 602.

9. [Mother] has been working with SOCAP since February of 2006 and has not benefited from their assistance.

App. at 21. Holzinger, the SOCAP representative who worked with Mother, testified that she assisted Mother in finding housing and provided her with some food vouchers. Holzinger indicated that Mother did not follow through on her referrals to Project Impact and Park Center. Although not to the degree desired by Holzinger, the evidence suggests that Mother did benefit from at least some of the services provided by SOCAP. This evidence does not support the finding that Mother has derived no benefit from SOCAP's services.

13. [Mother] has been unable to ensure that her children bathe regularly.

App. at 22. The only evidence that supports the finding that there is an issue with the children's hygiene is the testimony of Knowles that when she visited Mother's home on December 15, 2006, two of the triplets could have benefited from a shower. This single occurrence does not support the finding that the children did not bathe regularly. Moreover, Kelker and Smith testified that they did not observe any hygiene issues.

The juvenile court concluded that Mother is unable to provide the children with necessary medical care and supervision that has resulted in their physical and mental condition being seriously endangered. We do not believe that the findings support the conclusion that the children's physical and mental conditions are seriously endangered. The summation of the findings is that each child does not have his own bed, D.C. and Jam.J. are having behavioral issues at school resulting in numerous out-of-school suspensions, Mother has cooperated with the school discipline regarding these behavioral issues and attends

meetings when requested, in the past Mother did not provide D.C. with his medication regularly, and Mother has participated in some voluntary services recommended by her children's school but has since discontinued her participation. These findings do not lead to the conclusion that through her action or inaction that the children's physical and mental conditions are seriously endangered.

The state's *parens patriae* power overcomes an individual's fundamental right to direct the care, custody and control of his or her children when parents neglect, abuse or abandon their children. In re T.H., 856 N.E.2d at 1250. The evidence presented by ACDCS does not demonstrate or support an inference that Mother neglected, abused or abandoned the children. At best, it shows that when Mother could have improved the quality of her children's lives she did not always do so. Despite ACDCS's desire that Mother do more, these circumstances do not amount to the conclusion that Mother's inaction has resulted in the children's physical and mental conditions being seriously endangered, necessitating the State to invoke its *parens patriae* power. Accordingly, we conclude the court's adjudication of D.C., Jam.J., Jac.J.1, and Jac.J.2 as CHINS was in error.

Reversed.

NAJAM, J., and CRONE, J., concur.